



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 20th day of November, 1996

**SERVED: November 20, 1996**

**AIR JAMAICA LTD.**

Violations of 49 U.S.C. §41712  
and 14 CFR 399.84

**CONSENT ORDER**

This consent order concerns an advertisement of Air Jamaica Ltd. (Air Jamaica) that did not comply with the full-fare advertising requirements of section 399.84 of the Department's regulations (14 CFR 399.84), and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. §41712. This consent order directs Air Jamaica to cease and desist from future violations and to pay a compromise civil penalty.

Air Jamaica published an advertisement in the December 22, 1995, edition of the *Miami Herald*, offering fares of \$108 from Miami to Montego Bay.<sup>1</sup> In a footnote using small type, the advertisement gives the following notice: "One way based on round trip purchase. Restrictions and penalties apply. Fares not inclusive of taxes and security charges." The advertisement does not disclose that an additional \$32.95 in additional taxes and fees<sup>2</sup> had to be paid by each passenger, or that a Jamaican departure tax of \$500 Jamaican/\$13 U.S., payable to the carrier, is required upon departure from Jamaica. Furthermore, the fare was subject to the following restrictions: the fares were each way based on a round-trip purchase; not every seat was available at the stated price<sup>3</sup>; the fares were limited to travel departing Monday through Thursday only; there was a three-day, advance purchase requirement; and the fare required a two night minimum stay and was subject to a thirty night maximum stay.

Over the past several years, through a series of industry letters and enforcement orders, we have placed airlines and travel companies directly on notice of their obligation to conform to our price advertising requirements and enforcement policies in complying with the relevant statutory provisions. Under the long-standing policy of the Department, and the Civil Aeronautics Board before it, the failure to disclose significant restrictions, such as advance purchase requirements, capacity controls, minimum-maximum stay requirements,

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<sup>1</sup> The fare was in effect from December 27, 1995, to January 18, 1996, for the Miami-Montego Bay/Kingston, Jamaica market.

<sup>2</sup> These taxes and fees were as follows: \$6.00 U.S. departure tax; \$6.00 U.S. Immigration fee; \$6.50 U.S. Customs fee; \$1.45 U.S. APHIS fee; \$10.00 security surcharge; and a \$3.00 PFC charge.

<sup>3</sup> Approximately 45 percent of the seats on a given flight were available at the fare.

and dates of travel restrictions and black-out dates in fare advertisements is considered to be a violation of section 41712 and has been the subject of enforcement actions. (See, e.g., December 20, 1994, letter from Secretary Peña to 59 Airline Chief Executives and Order 96-4-47.) Since Air Jamaica's newspaper advertisement did not disclose the fact that the fares were subject to advance purchase requirements, capacity controls, minimum-maximum stay requirements, and were available only on certain days of the week, the advertisement is unfair and deceptive within the meaning of section 41712.

In addition, section 399.84 of the Department's regulations (14 CFR 399.84) requires that any advertising or solicitation for air transportation that states a price for such air transportation must state the entire price to be paid. As regards the advertisement of each-way fares that are available only when bought for round-trip travel, this office has, as a matter of enforcement policy, permitted carriers to advertise such fares so long as the disclosure of the round-trip purchase requirement in the advertisement is clear and conspicuous, *i.e.*, prominent and proximate to the advertised fares. (See March 9, 1995, letter from this Department's Office of Aviation of Enforcement and Proceedings (Enforcement Office) to U.S. and Foreign Air Carriers.) Printing the round-trip requirement in fine print below and outside of the fare box, as Air Jamaica did, has been found to be insufficient notice in a newspaper advertisement and is a violation of section 399.84 as well as section 41712. (See Order 93-3-24.)

As regards government-imposed and -approved taxes and fees collected by the carriers, such as custom fees, departure taxes, and PFCs, as a matter of enforcement policy, carriers have been permitted to state such taxes and fees separately in fare advertisements so long as the charges are levied and collected on a per-passenger basis and their existence and amount are clearly indicated in the advertisement. (See, e.g., December 20, 1994, letter from Secretary Peña and May 1, 1992, letter from the Enforcement Office to U.S. and Foreign Air Carriers.) This policy also covers fees imposed by foreign governments such as foreign departure taxes. (See, e.g., July 14, 1995 letter from the Enforcement Office to U.S. and Foreign Air Carriers and Travel Agency Executives and Order 96-1-32.) Fees imposed by government entities on other than a per-passenger basis must be included in the advertised total price to be paid by the seller and may not be stated separately. Furthermore, general phrases that preclude consumers from calculating an actual, maximum, or range of fees, such as the phrase "fares not inclusive of taxes and security charges" used by Air Jamaica in the advertisement, do not satisfy our full-price advertising rule. We consider any advertisements which do not comply with the above policies to be a violation of both section 41712 and section 399.84, and we have pursued enforcement action against carriers that have failed to comply with these requirements. (See, e.g., Orders 96-6-25, 96-4-47, 96-1-13, 95-11-3, 95-1-39, 93-4-40, 92-10-41, and 92-7-19.) Since Air Jamaica's advertisement is not in compliance with these policies, the carrier has violated both section 41712 and section 399.84.

In mitigation, Air Jamaica states that any shortcomings in the advertisement were inadvertent rather than the result of an intent to disregard the Department's regulations or to deceive the traveling public. The carrier states that at the time that the advertisement ran it was undergoing the process of privatization, and that the new management retained an outside advertising agency that had no prior experience in preparing advertisements for air carriers. Similarly, the carrier's own advertising and marketing personnel were new and unfamiliar with the requirements of section 399.84 or with the policies governing the format of fare advertisements.

Air Jamaica states that it did not receive any complaints from passengers who believed that they had been misled by the advertisement, and that this is the first time that the management of the privatized carrier has been charged with violating the Department's advertising regulations. The carrier further states that the advertisement ran only once and that as soon as the carrier became aware of the Department's advertising requirements, it canceled a second proposed advertisement which arguably did not conform to section 399.84 and instituted a process to ensure that future advertisements would conform strictly to the Department's regulations and policies. In addition, the carrier has cooperated fully with the Enforcement Office.

Air Jamaica states that it has commenced a process of instructing all individuals responsible for preparing, reviewing and approving its fare advertisements, including the employees of its advertising agency, of the precise disclosure and notice requirements that the Department's regulatory policies mandate for newspaper advertisements. Furthermore, it states that it is now developing and will soon distribute internal guidelines for price advertising, including a checklist of the Department's requirements, which all such advertisements must satisfy. Additionally the carrier states that it is taking all possible steps to enhance the coordination between its staff and advertising agency to prevent any further problems.

After carefully considering all the facts in this matter, including Air Jamaica's explanation, we continue to believe that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the alleged violations, Air Jamaica has agreed to a settlement of this matter with the Enforcement Office. Air Jamaica consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §41712 and section 399.84 and to an assessment of \$20,000 in compromise of potential civil penalties. Of this amount, \$10,000 shall be paid within 15 days of the date of issuance of this order. The remaining \$10,000 shall be suspended for one year following the issuance date of this order and shall be forgiven unless Air Jamaica fails to comply with the payment provisions of this order, or commits other violations of 49 U.S.C. §41712 or section 399.84, or this order during the year, in which case the entire unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately.

We believe that this compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. It represents an adequate deterrence to future noncompliance with our advertising regulations and section 41712 by Air Jamaica, as well as by other sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

**ACCORDINGLY,**

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Air Jamaica Ltd. violated 14 CFR 399.84 by advertising a fare which failed to state the total price to be paid;
3. We find that by engaging in the conduct described in paragraph 2, above, and by failing to disclose in an advertisement that the promoted fare was subject to advance purchase requirements, capacity controls, minimum-maximum stay

requirements, and were available only on certain days of the week, Air Jamaica Ltd. engaged in unfair and deceptive practices in violation of 49 U.S.C. §41712;

4. Air Jamaica Ltd. and all other entities owned or controlled by or under common ownership with Air Jamaica Ltd., and their successors and assignees, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. §41712;
5. Air Jamaica Ltd. is assessed \$20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this amount, \$10,000 shall be paid within 15 days of the date of issuance of this order. The remaining \$10,000 shall be suspended for one year following the issuance date of this order and shall be forgiven unless Air Jamaica Ltd. fails to comply with the payment provisions of this order, or commits other violations of 49 U.S.C. §41712 or 14 CFR 399.84, or this order during the year following issuance of the order, in which case the entire unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately and Air Jamaica Ltd. will be subject to further enforcement action; and
6. Payment shall be made within 15 days of the date of issuance of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Air Jamaica Ltd. to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**